

## Chapter 5

# PURCHASING METHODS

### 5.1 OVERVIEW OF PURCHASING METHODS

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How do you decide what method to use?

As a general rule, you must use a competitive process to purchase services. See 11 IAC chapter 106. Executive Order 25 directs agencies purchasing services to do so as “efficiently and effectively as possible” and to make “every reasonable effort” to “insure that commitments of public funds for services be done so as to obtain the most value for the money spent.” Competition should be open, fair and objective and should be conducted carefully to ensure those aims are achieved.

In order to decide what method you may use to purchase services, you need to think through some initial questions:

- • What services do we want?
- • Who are the likely providers of those services?
- • How much do we expect those services to cost?

Your answers to these questions will help you decide what method you should use to select a service provider.

**Intergovernmental agreements** If you would like to contract with another state agency, a political subdivision of the State of Iowa (cities, counties, public school districts), the federal government, another state government, or a political subdivision of another state, you may enter into the contract without using a competitive selection process. You are not required to purchase services from another governmental entity unless some provision of law restricts you to using that governmental entity. As a result, you may want to consider whether you can get a better deal from another service provider before entering into a contract with a governmental entity without competitive selection. Other governmental entities also have obligations to

competitively bid their contracts. As a result, you should not contract with another governmental entity just so that entity can sub-contract out your agency's work without a competitive process.

**Contracts with the Private Sector** If you think you are most likely to purchase the services from a private entity (a firm that is not a governmental entity), you need to estimate how much you think the services might cost.

### **One-Year Contracts**

- • **If the total value of the contract is likely to be less than \$5,000** – You may enter into the contract without using a competitive process. You should note, however, that seeking competition is always recommended, even though not required for this dollar range.
- • **If the total value of a one-year contract is likely to be \$5,000 or more, but less than \$50,000** – You must use a competitive process to select a service provider unless you have a valid justification for a sole source or emergency procurement. **You may use either an informal or formal competitive process.**
- • **If the total value of a one-year contract is likely to be \$50,000 or more** – You must **use a formal competitive process** to select a service provider unless you have a valid justification for a sole source or emergency procurement.

### **Multi-Year Contracts**

- • **If the contract is for more than one year and the total value of the contract, including renewals, over all of the years is likely to be less than \$15,000** – You may enter into the contract without using a competitive process. Again, you should note that seeking competition is always recommended, even though not required for this dollar range.
- • **If the contract is for more than one year and the total value of the contract, including renewals, over all of the years is likely to be \$15,000 or more, but less than \$150,000** – You must use a competitive process to select a service provider unless you have a valid justification for a sole source or

emergency procurement. **You may use either an informal or formal competitive process.**

- **If the contract is for more than one year and the total value of the contract, including renewals, over all of the years is likely to be \$150,000 or more – You must use a formal competitive process** to select a service provider unless you have a valid justification for a sole source or emergency procurement.

## **5.2 INFORMAL COMPETITIVE PROCESS**

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The informal competitive procedure is described in **11 IAC 106.9**. The rules define “informal competition” to mean:

A streamlined competitive selection process in which a department or establishment makes an effort to contact at least three prospective service providers identified by the purchasing department or establishment as qualified to perform the work described in the scope of work to provide bids or proposals to provide the services the department or establishment is seeking.

The process includes the following steps:

1. Locate the names and addresses of at least three firms or individuals that would be qualified to provide the service. If you cannot locate three prospective providers, you should prepare an explanation justifying why you contacted less than three potential service providers and keep a copy of that justification in your contract file. The justification should include a description of the steps you took to locate three prospective providers.
2. Prepare a solicitation document. The solicitation document should include a scope of work describing the type of service required. The document should also include the proposed project schedule, a request for information on the service provider's qualifications, a request for the service provider's cost or fees, and the due date, time and location to submit responses.

3. Post notice of the solicitation to the TSB website 48 hours before you send contact the vendors you have identified. If any firm requests an opportunity to submit a proposal, you should add it to your list of potential service providers.
4. Contact the prospective service providers. You may contact prospective service providers in person, by telephone, fax, E-mail or letter. This informal competitive process is intended to be expeditious; however, agencies should provide enough time for firms to submit complete responses.
5. Document the time and date written responses are received.
6. Evaluate the responses and determine which service provider's proposal most closely meets the requirements of the solicitation. Enter into contract negotiations with the top finalist.
7. Prepare the contract document and acquire signatures of both parties.
8. Thoroughly document the entire selection and award process. Prepare auditable documentation of the competitive process and maintain it in the contract file. Such documentation should include: the names of the firms contacted and/or solicited; a copy of the solicitation document; information on how the service providers responded; an explanation of the evaluation and basis for the award decision; process; and a copy of the contract.

An example of a Solicitation document used for an informal competitive process is included at Appendix G.

### **5.3 FORMAL COMPETITION**

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With formal competition, an agency issues a Request for Proposal (RFP) or other formal solicitation document. Agencies most frequently use RFP's or Invitations to Bid (ITB) to purchase services.

#### **Request for Proposals (RFP)**

The RFP is the procurement document most frequently used in state government to procure services. This document not only serves as the basis for the service providers to respond but, as importantly, serves as the foundation for the eventual contract. A

well-written, well-considered RFP will help ensure responsive proposals and positive results. **The RFP must provide clear, unambiguous statements of project goals and objectives, instructions for submitting the proposals and criteria for proposal evaluation.**

Customarily, the RFP requests that a consulting firm prepare, at its own expense, a proposal that responds to the specific needs of the agency. Therefore, the RFP must clearly communicate those needs.

**Sample RFP Format** – Please refer to Appendix P for a sample Request for Proposals. The sample includes annotations that explain various provisions of the RFP. The terms in this sample represent a fairly standard approach to a solicitation document.

**Other RFP Elements** – RFPs may include many provisions appropriate to the project, which are not included in the sample RFP, Appendix P. Some RFPs require the proposer to respond with a “Letter of Intent to Bid,” which provides the agency an estimate of the number of responses to expect.

**Sample RFP Schedule** – The following sample schedule of sequential, primary activities of an RFP process is provided as a guide in developing a procurement schedule. A complex procurement can take much longer; a simple procurement could be accomplished in less time.

RFP Tasks	Approximate Time to Complete
1. 1. Develop a detailed need statement. 2. 2. Draft the RFP. 3. 3. Coordinate review of the draft RFP with agency staff. 4. 4. Develop a schedule for the RFP. 5. 5. Make arrangements for the vendors conference, if there is one.	Allow a ‘chunk’ of time i.e. 2 – 8 weeks or more

6. 6. Prepare legal notice of forthcoming RFP and publish in newspapers.	
7. 7. Compile mailing list.	
8. 8. Complete final RFP document.	
9. 9. AG review if needed.	
10. 10. Select RFP evaluators.	
11. 11. Draft scoring sheets to be used by evaluators.	
12. 12. Issue the RFP to all interested parties; allowing time for vendor's to review the RFP.	6 – 18 Weeks
13. 13. Receive and document written questions regarding the RFP.	
14. 14. Prepare agenda for the vendor conference.	
15. 15. Conduct vendor conference (used for more complex procurements).	3 – 6 Weeks
16. 16. Send addendum to the RFP including questions and answers from the vendor conference as well as any written questions.	
17. 17. Accept proposals until deadline for submission.	
18. 18. Determine responsiveness of proposals.	4 – 8 Weeks
19. 19. Evaluate proposals and make award determination.	
20. 20. Obtain internal agency review and approvals for award.	
21. 21. Announce apparent successful contractor.	
22. 22. Notify unsuccessful proposers	
23. 23. Negotiate contract	4 – 8 Weeks
24. 24. Finalize contract document	1 – 6 Weeks
25. 25. Complete and submit any required forms.	1 – 6 Weeks
26. 26. Sign Contract and begin work.	

### **Legal Review**

You may wish to ask your agency's assistant attorney general to review the RFP before it is finalized and released. You should consult with your legal counsel if you are considering making any changes in the RFP that the sample annotated RFP included in Appendix P says you should not make or says you should consult with

your attorney before making. If you need to have your assistant attorney general review the RFP, you should plan on giving the attorney enough time to fit into his or her schedule and complete the review. You should work with your assistant attorney general to decide what is the most effective way to utilize your attorney's review.

### **Proposal Preparation and Submission Instructions**

The RFP should contain instructions on how to prepare the proposal. Specifying a standardized format for responses will ease evaluation by the agency. Service providers should understand that failure to follow prescribed requirements and to submit requested information may result in rejection of the proposal as non-responsive.

### **Evaluation Criteria**

Detailed evaluation criteria should be developed concurrently with the RFP. The evaluation criteria must be consistent with the RFP. To use the point score method, evaluation criteria are individually weighted with a point value relative to the item's importance to project success.

The following evaluation criteria, not listed in order of significance, are often used to evaluate proposals:

- • Proposer's project approach and methodology.
- • Quality of project work plan.
- • Feasibility of the proposed schedule.
- • Description of proposed deliverables.
- • Project management and internal controls.
- • Firm's and staff qualifications and relevant experience.
- • Business references.
- • Project cost.

The proposal evaluation scoring sheet, including specific criteria and the weighting or point value of each, should be developed prior to issuing the solicitation

document. Appendix D is an example of an Evaluation Score Sheet. More detailed questions specific to the project would often be included in an agency's scoring sheet depending upon the nature and complexity of the project. The critical point is that the scoring sheet reflects the requirements stated in the RFP.

### **Timeline for Responses**

Many factors determine the amount of time between mailing the solicitation document and the due date for responses. Generally, service providers should be given enough time to prepare a thorough and comprehensive response. Six to eight weeks from issuance of the solicitation is a reasonable time for service providers to prepare responses under most circumstances. The absolute minimum is two weeks, i.e., ten working days, in the case of a genuinely urgent situation or a simple project.

If the timeline is too restrictive on a major procurement, the agency risks reducing both the quality and the quantity of proposals submitted. Service providers may not have the opportunity to assemble the best management team or to prepare a comprehensive technical proposal when unrealistic response dates are set. In some instances, qualified service providers may not bid if they think an unrealistic timeframe is being imposed.

### **Invitation to Bid (ITB)**

An ITB, although not used as frequently to purchase services as RFP's, may also be used to purchase services. An agency would use an ITB instead of a RFP when price is the only factor it will use to select a service provider. You should talk to your legal counsel and/or the Department of General Services if you think you would like to do an ITB and need help putting it together.

## **5.4 5.4 PURCHASING FROM ANOTHER AGENCY'S CONTRACT**

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Agencies have indicated an interest in issuing competitive solicitations for services that allow other agencies to purchase from their contracts. If an agency is interested in this



arrangement, the Request for Proposals (RFP) must clearly state this intent. Proposers must understand the potential quantity of services that may be demanded in order to respond with a viable proposal.

The awarding agency is responsible to comply with all the terms of the RFP and the contract. The agency awards the contract specifying the scope of work, maximum contract amount and rates for services, period of performance, etc. As with all other contracts, the scope of services must be consistent with the description in the solicitation.

## **5.5 5.5 EXCEPTIONS TO USING A COMPETITIVE PROCESS**

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As discussed above, as a general rule you must use competition to select a service provider to perform services for your agency when you are purchasing services from a private sector entity. When you are purchasing services from a governmental entity, competitive selection is not required. See Section 5.1. In *limited* circumstances you may have a valid justification to enter into a contract without having used a competitive process to select the service provider. These exceptions are referred to as sole source procurements and emergency procurements. ***Caution: These procurement options are intended to be used only in narrow circumstances and as a method of last resort! There are also increased documentation and justification requirements if you opt to use a sole source or emergency procurement.***

These procedures **do not** relieve Agencies from the responsibility to negotiate a fair and reasonable price for services purchased using sole source or emergency procurements and to thoroughly document the procurement action. The contract you enter into as the result of a sole source or emergency procurement must contain all necessary terms and conditions required by **11 IAC chapter 107**.

### **Sole Source Procurement**

**11 IAC 106.3** defines “sole source procurement” as “a purchase of services in which the department or establishment selects a service provider without engaging in a competitive selection process.” Rule **106.7** spells out the justifications for using sole

source procurement and also imposes some additional documentation and reporting requirements if you choose to do sole source procurement. **You should note that the rule specifically says that “[a] sole source procurement shall be avoided unless clearly necessary and justifiable.”**

There are six justifications found in **11 IAC 106.7(1)** that allow for an agency to use sole source procurement

1. 1. An agency determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or
2. 2. The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or
3. 3. An agency is hiring a service provider to provide peer review services for a professional licensing board pursuant to Iowa Code chapter 272C; or
4. 4. An agency is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or
5. 5. The federal government or other provider of funds for the services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the agency's use of the funds in a way that restricts the agency to only one service provider; or
6. 6. Applicable law requires, provides for, or permits use of sole source procurement.

If you are considering using a sole source procurement to select a service provider, you should carefully consider whether you in fact have an adequate

justification for using sole source procurement instead of a competitive process. In addition to going through the list of justifications for using a sole source procurement in subrule **106.7(1)**, working through the sole source justification form should help you determine whether you have adequate justification for a sole source procurement. Chapter 9 provides information on completing the required forms. You may also wish to consult with your assistant attorney general before entering into a contract based on sole source procurement.

The rules also establish additional administrative requirements that agencies must comply with when using sole source procurement. These additional requirements include completing the sole source justification form mentioned above if the value of the purchase exceeds \$5,000 or \$15,000 for a multi-year contract. The director of the agency must sign the sole source justification form, and the director or the director's designee must sign the sole source contract. See 11 IAC 106.7(2). Chapter 9 provides additional information on complying with these additional requirements.

## **Emergency Procurement**

**11 IAC 106.3** defines an "emergency" to include, but be limited to: a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare, or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

An "Emergency procurement" is "an acquisition of a service or services resulting from an emergency need." See Rule 106.3.

Rule **106.8** spells out the justifications for using an emergency procurement to select a service provider and also imposes some additional documentation and reporting

requirements if you choose to do an emergency procurement. **You should note that emergency purchases should not be used as a solution for hardships caused by neglect, poor planning, or lack of organization by the agency. Also, the procedure does not relieve you from negotiating a fair and reasonable price and from documenting your procurement process. The scope and duration of any contract entered into as a result of an emergency procurement should be limited to what is necessary to respond to the emergency.**

Rule **106.8(1)** provides:

**106.8(1) When justified.** An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or establishment may consider price and availability of the service procured so that the department or establishment obtains the best value for the funds spent under the circumstances. Departments or establishments should attempt to acquire services, with as much competition as practicable under the circumstances.

Like sole source procurements, the rules establish additional administrative requirements that agencies must comply with when using an emergency procurement. These additional requirements include completing the emergency justification form mentioned above if the value of the purchase exceeds \$5,000. The director of the agency or the director's designee must sign the emergency justification form and the contract. See 11 IAC 106.8(2). Chapter 9 provides additional information on complying with these additional requirements.

**Appendix G:** [http://das.gse.iowa.gov/procurement/AppG\\_InformalCompetitiveSolicitation.pdf](http://das.gse.iowa.gov/procurement/AppG_InformalCompetitiveSolicitation.pdf)

**Appendix N:** [http://das.gse.iowa.gov/procurement/AppN\\_PurchasingMethodsFlowChart.pdf](http://das.gse.iowa.gov/procurement/AppN_PurchasingMethodsFlowChart.pdf)

**Appendix P:** [http://das.gse.iowa.gov/procurement/AppP\\_RequestforProposalAnnotated.pdf](http://das.gse.iowa.gov/procurement/AppP_RequestforProposalAnnotated.pdf)

**Appendix D:** [http://das.gse.iowa.gov/procurement/AppD\\_EvaluationScoreSheet.pdf](http://das.gse.iowa.gov/procurement/AppD_EvaluationScoreSheet.pdf)